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TIR 09-18: Corporate Combined Groups, Composite Filers, and Certain Pass-Through Entities Must File Returns Electronically

I. Introduction

The Commissioner is expanding electronic filing and payment requirements, pursuant to authority under G.L. c. 62C, § 5, for the following returns, which are generally filed on an annual basis, for taxable years beginning on or after January 1, 2009:

- Returns on behalf of a taxpayer corporation reporting such corporation's income and resulting tax liability derived from the activities of a combined group under newly enacted G.L. c. 63, § 32B;
- Composite returns by a pass-through entity filing on behalf of its non-resident members under 830 CMR 62.5A.1(11)(f);
- Returns by a pass-through entity, unless its members consist entirely of resident individuals; and
- Returns by a pass-through entity withholding tax on a member's distributive share, or receiving distributive share for which a lower-tier entity has paid withholding or estimated taxes.

Electronic filing requirements previously announced in TIRs 04-30 and 05-22 remain in effect.

II. Returns of Members of Corporate Combined Groups

A taxpayer corporation that is to report its income derived from the activities of a combined group within the meaning of newly enacted G.L. c. 63, § 32B, must electronically file as to, and pay tax on, such income using software offered by authorized vendors and approved by the Commissioner. This electronic file and pay requirement applies to taxable years beginning on or after January 1, 2009. See 830 CMR 63.32B.1(12)(a). The returns reporting the income of such taxpayer members of a combined group are to be filed on behalf of the taxpayer corporations by a principal reporting corporation for the group, as described in 830 CMR 63.32B.1(11)(a). Amended returns, as well as original returns, must be filed electronically if they result in an increase in tax or no change in tax amount. Amended returns that result in a decrease in tax liability should be filed on paper. Extension requests should also be filed electronically. This electronic filing and payment requirement applies to any taxable member of a combined group, even if the member owes only the minimum excise.

A taxable member of a combined group must make its estimated payments through Webfile for Business. Tax payments due with the return must also be made electronically.

Any other required tax filings by members of a combined group shall be made consistent with electronic filing rules previously announced in Technical Information Releases 05-22 and 04-30. For example, any member of a combined group that is required to file a return as to its non-income measure is required to file that return electronically when it meets the corporate income threshold of

\$100,000 explained in TIR 05-22 II.A. Failure to comply with the filing requirements of 05-22 and 04-30 may result in the imposition of a penalty under TIR 04-30 IV.F.

III. Composite Returns

Any entity filing a composite return on behalf of its individual non-resident members, as described in 830 CMR 62.5A.1(11)(f), must file that return electronically using software offered by authorized vendors and approved by the Commissioner for taxable years beginning on or after January 1, 2009 and must make estimated payments electronically using the Department's website. The Commissioner previously announced this electronic filing requirement for composite returns in 830 CMR 62.5A.1(f)(4). Extension requests for tax years 2009 and thereafter must also be made electronically, whether or not any payment is submitted. Amended returns must be filed on paper regardless of whether those returns reflect an increase or decrease in tax.

IV. Returns by Certain Pass-Through Entities

A pass-through entity with a Massachusetts filing obligation must electronically file its return, and all required schedules, unless its members consist entirely of resident individuals. In addition, any pass-through entity that withholds tax on a member's distributive share or receives distributive share for which a lower-tier entity has paid withholding or estimated taxes must file electronically even if all members are resident individuals. This electronic filing requirement is in addition to the electronic filing requirements of TIRs 04-30 and 05-22, which remain in effect.

This electronic filing requirement applies to taxable years beginning on or after January 1, 2009. Electronic filing must be made using software offered by authorized vendors and approved by the Commissioner. Filers must also make extension requests for tax years 2009 and thereafter electronically. In filing amended returns, pass-through entities that are subchapter S corporations should, if tax liability decreases, file the amended return on paper, and if tax liability increases or does not change, file the amended return electronically. All other pass-through entities should file amended returns on paper.

For purposes of Part IV of this TIR, all terms are as defined in 830 CMR 62B.2.2. A pass-through entity is an entity in which income, loss, deductions, and credits flow through to members for Massachusetts tax purposes. A pass-through entity may be a general partnership, limited partnership, limited liability partnership, limited liability company with a member treated as a partner under Massachusetts tax law, S corporation, estate not taxed at the entity level, and a trust not taxed at the entity level, including a grantor trust. "Member" includes a shareholder of an S corporation; a partner in a partnership, including a limited partner in a limited partnership and a partner in a limited liability partnership; a member of a limited liability company treated as a partner under Massachusetts tax law; and a beneficiary of an estate. "Tiered structure" is a pass-through entity that has a pass-through entity as a member. As between two entities in a tiered structure, the pass-through entity that is a member is referred to as the upper-tier entity, and the entity of which it is a member is referred to as the lower-tier entity.

This electronic filing requirement also extends to pass through entities that may not be required to participate in the pass-through entity compliance program under 830 CMR 62B.2.2, such as investment partnerships, trusts and estates required to withhold on non-residents under G.L. c. 62, § 10(g), entities prohibited by law from making tax payments on behalf of their members, and publicly traded partnerships with a Massachusetts filing obligation. In addition, any pass-through entity in a tiered structure receiving distributive share on which a lower-tier entity has withheld taxes or made estimated payments must itself file its return and all schedules electronically.

A pass-through entity may rely on an individual member's disclosure on his or her Form PTE-EX, if it is required to be filed, in determining whether a member is a resident or a non-resident. If a member required to file this form has not done so, the member shall be deemed to be a non-resident and the entity must file electronically.

V. Automatic Extensions

The electronic filing methods for combined group filers, composite return filers, and pass-through entities will be available from software providers sometime after January 1, 2010. A taxpayer required to file before the electronic filing method is available will receive an automatic filing extension for the period between the required filing date and 30 days after the date the electronic filing method is available. The taxpayer will, however, be required to electronically pay its tax liability timely, including any statutory extensions.

VI. Failure to File Electronically

No approved paper form exists for combined or composite returns, except as specified above. If a filer of one of the returns required under this TIR to be filed electronically nonetheless attempts to file a paper return in some manner, the return will not be accepted and will be deemed not to have been filed, as authorized under G.L. c. 62C, § 5. The paper filing will be destroyed, provided that the Department will accept and process any paper checks that may be included. No interest or penalties attributable to the payment will accrue if all payments are timely and equal or exceed the taxpayer's tax liability. Penalties will accrue to corporate combined group filers, composite filers, and pass-through entities mandated to file electronically for failure to file the return if the return is not filed electronically. The taxpayer will be treated as a non-filer until the taxpayer files according to the required electronic filing method.

/s/Navjeet K. Bal

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Commissioner of Revenue

NKB:MTF:lab

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